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OFFICE OF PETITIONS

In re Application of :
Bell :
Application No. 10/827,417 :
Filed: April 20, 2004 :
Attorney Docket No. 4480-65 :

ON PETITION

This is a decision in response to the letter filed July 14, 2004, which is being treated as a petition requesting entry of Figure 2 submitted on July 14, 2004.

The petition is **dismissed**.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

MPEP 201.06(c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. . . .

If a continuation or divisional application as originally filed is entitled to a filing date despite the omission of a portion of the prior application(s), applicant will be permitted to add the omitted material by way of an amendment provided a statement was included in the application as originally filed that incorporates by reference the prior application(s). If the application as originally filed includes a proper incorporation by reference of the prior application(s), an omitted specification page(s) and/or drawing figure(s) identified in a "Notice of Omitted Item(s)" may be added by amendment provided the omitted item(s) contains only subject matter in common with such prior application(s). In such case, applicant need not respond to the "Notice of Omitted Item(s)." Applicant should submit the amendment adding the omitted material prior to the first Office action to avoid delays in the prosecution of the application. See MPEP § 601.01(d) and § 601.01(g).

If petitioner desires for the examiner to consider the missing pages which were not submitted as part of the original disclosure, then petitioner may submit those pages as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a). The amendment is not new matter if the substance was a part of the disclosure of the prior application.

The pages submitted with the petition will not be entered. Should petitioner wish for the pages to be entered, an amendment must be filed.

The original application papers will include only those application papers present on the date of deposit.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 20, 2004, using only the application papers filed on April 20, 2004.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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